

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 569 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SAVAISING S CHAUHAN

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Appearance:

MR KP R AVAL, APP for Petitioner

MR JIVANLAL M PATEL for Respondent No. 1

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/10/1999

ORAL JUDGEMENT

1. This acquittal appeal under section 378 of the Criminal Procedure Code arises from the judgment and order dated 4/12/1985 rendered by the learned Addl. Sessions Judge, Ahmedabad (Rural) in Criminal Appeal No. 68 of 1985. The learned Addl. Sessions Judge has, by his impugned order, set aside conviction and sentence of the respondent herein (for short 'accused') for the

offence punishable under section 66(1)(b) of the Bombay Prohibition Act rendered by the Ld. 3rd Joint Civil Judge (J.D.) and J.M.F.C., Ahmedabad (Rural) in Criminal Case No. 126 of 1984 on 31/5/1985. The accused was sentenced to undergo rigorous imprisonment for three months and to pay fine of Rs.500/-, in default rigorous imprisonment for one month.

2. The prosecution story would indicate that on 13.10.1983 at about 10.27 p.m. P.S.I. Mr. Pardeshi received message from control room that the accused consumed liquor at or near telephone office. He immediately went there and found the accused, a constable in State Reserve Police, in drunken condition and speaking indecent language. His mouth was smelling alcohol. He was therefore, taken to the hospital, where the medical officer examined him, extracted his blood for its chemical analysis and sent the same for that purpose. The report of the chemical analyser indicated that there was concentration of alcohol in the blood of the accused and that was more than what was required under law. It was 0.1012% v/w. That is how the accused faced his trial and stood convicted at the hands of the trial Court as aforesaid. The learned Addl. Sessions Judge, dealing with the evidence of medical witness Narendrasinh Raghuvirsinh exh. 7, came to the conclusion that the requirements of rule 4 of the Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959 were not established to have been complied with in many respects and, therefore, the accused deserved benefit of doubt. The learned Addl. Sessions Judge has referred to the said rule and decision of this Court in the case of Mahijibhai Lakhabhai v/s. State reported in 1980 (2) G.L.R. 159. This Court, upon consideration of rule 4 held that the said rule contained specific mandate to the effect that the cap of the phial in which the blood is collected should be sealed by means of sealing wax with the official seal or the monogram of the registered medical practitioner, who has collected the blood and that the provision in that regard is mandatory. The learned Addl. Sessions Judge has quoted rule 4. It would read as under :-

"4. Manner of collection and forwarding of blood.- (1) The registered medical practitioner shall use a syringe for the collection of the blood of the person produced before him under rule 3. The syringe shall be sterilized by putting in the boiling water before it is used for the aforesaid purpose. He shall clean with 1% aqueous solution of mercurochrome or gentior

violet, not containing alcohol or its solution the skin surface of that part of such person's body from which he intends to withdraw the blood. No alcohol shall be touched at any stage while withdrawing blood from the body of the person. He shall withdraw not less than 5 c.c. of venous blood in the syringe from the body of the person. The blood collected in the syringe shall then be transferred into a phial containing anticoagulant and preservative and the phial shall then be shaken vigorously to dissolve the anticoagulant and preservative in the blood. The phial shall be labeled and its cap sealed by means of sealing wax with the official seal or the monogram of the registered medical practitioner.

- (2) The sample blood collected in the phial in the manner stated in sub-rule (1) shall be forwarded for test to the Testing Officer either by post or with a special messenger so as to reach him within seven days from the date of its collection. It shall be accompanied by a forwarding letter in Form "B" which shall bear a facsimile of the seal or monogram used for sealing the phial of the sample blood."

At this very stage Form B might be seen. It is a form of forwarding letter, which inter-alia contains certificate in following manner :-

"I certify that the manner in which the blood was collected and sealed is as under :-

- (1) The syringe used for the collection of blood was sterilized by putting it into boiling water before its use.
- (2) xxx xxx xxx xxx xxx
- (3) No alcohol or its solution was touched at any stage while withdrawing the blood from the body.
- (4) The blood collected in syringe was transferred in the phial containing anticoagulant and preservative.
- (5) The phial was rigorously shaken to dissolve the anticoagulant and preservative in the blood.

(6) xxx xxx xxx xxx xxx

(7) xxx xxx xxx xxx xxx

Yours faithfully,"

The learned Addl. Sessions Judge referring to the evidence of the medical witness has observed that the medical witness has not stated in his evidence that the syringe which he used for collecting blood of the accused was sterilized by putting it in the boiling water before its use for collecting blood of the accused. He has also observed from the evidence that the medical witness has not said anything about he himself having added anticoagulant and preservative in the phial. He has finally observed that the witness did not say a word about he having not allowed alcohol in any manner to be touched at any stage while withdrawing blood from the body of the accused. He has finally dealt with the application of seal bearing mark "Assistant Medical Officer, Civil Hospital, Ahmedabad" and observed that the medical witness has not stated in his deposition that such a seal was the official seal. He has, therefore, come to the conclusion that the prosecution has failed to establish all the aforesaid requirements of rule 4 having been complied with by the medical witness/medical practitioner, who had the occasion to take sample blood from the person of the accused. He, therefore, came to the conclusion that such requirements being mandatory and not established to have been complied with should result into conferment of benefit of doubt to the accused. He, therefore, rendered acquittal which has been impugned in this appeal.

3. Mr. K.P. Raval, Ld. A.P.P. has submitted that all the requirements of rule 4 quoted hereinabove are not mandatory in nature. In so far as the requirement of applying seal of the medical practitioner is concerned, he made a reference to Full Bench decision of this Court in the case of Chamanbhai Gangaram v/s. State of Gujarat reported in 1984 G.L.H. 438. Following propositions appearing in Head Note A might be noted :-

"The discussion and analysis of the relevant statutory provisions yield the following resultant categories of cases :

(i) If the authorised registered medical practitioner who collects the blood sample is in

charge of the concerned hospital or dispensary, he can utilise the official seal of the hospital or dispensary for getting it affixed on the phial of collected blood sample. That would be considered to be his official seal;

(ii) If the authorised registered medical practitioner who collects the blood sample in the phial as per Rule 4 (1), is not in charge of the hospital or dispensary, his official seal for the purpose of its affixation on the phial as per Rule 4 (1) would be his personal seal, if any, and if there is no such seal, he can utilise his monogram for the purpose;

(iii) Any authorised registered medical practitioner who is either a doctor in charge or any other medical practitioner attached to or serving in the hospital or dispensary can in his or her discretion utilise his or her monogram for the purpose of affixing it on the sealed phial even if there is available for the purpose an official seal of the hospital or his own personal seal, as the case may."

In the present case the seal which has been used is that of Assistant Medical Officer, Civil Hospital, Ahmedabad. It is not understandable why the learned Addl. Sessions Judge has observed that this should have been stated in his oral evidence to be the official seal of the doctor. The evidence of the doctor read as a whole, would indicate that he applied the seal in his capacity as Assistant Medical Officer of Civil Hospital, Ahmedabad. Therefore, this part of the impugned order does not merit acceptance. To that extent submission of Mr. Raval would hold good. Mr. Patel could not do anything better than reading the observations of the learned Addl. Sessions Judge, which cannot be accepted as aforesaid.

4. However, in so far as the rest of the requirements are concerned, the submission of Mr. Raval, ld. A.P.P. cannot be accepted. He read from Butterworths' Medical Dictionary the meaning of word 'autoclave' saying 'an automatically regulated apparatus which produces steam under pressure for the purpose of sterilization.' The submission from the reading of the meaning of the word 'autoclave' does not take the matter any further. There is no evidence to indicate that the process of sterilization was on when the syringe and the needle were taken out from autoclave. That process might

be electrical/electronic or through the medium of lighted gas stove or any other lighted stove which would produce steam into the apparatus. The evidence of the medical officer, which has been read in this Court also, is quite general and vague in nature. He was assisted by a nurse and a peon, neither of whom has been examined before the learned Addl. Sessions Judge. The medical witness has not deposed that the syringe and the needle were lifted from the boiled water or steaming process was in progress. Therefore, factually the requirement with regard to sterilization of the syringe by putting it into boiling water cannot be said to have been established beyond reasonable doubt. The learned Addl. Sessions Judge's conclusion in that respect cannot be faulted. Same would be the position with regard to state of medical evidence concerning addition of anticoagulant and preservative. The evidence of medical witness is quite general and vague. He has neither stated that the anticoagulant and preservative have been added in the phial nor he has asserted about such materials to have been placed in the phial. That part of the requirement of Rule 4 can also not be said to be established as observed by the learned Addl. Sessions Judge. Then there is no evidence with regard to requirement that no alcohol substance was allowed to be touched at any stage while withdrawing blood from the body of the accused. Mr. Patel drew my attention to the Form No. B appearing in the record of the case. The said Form does not contain the certificate as noted above. Thus, the required document for compliance of the aforesaid requirement, namely 'B' Form also does not contain any of the aforesaid certificates. Mr. Patel relied upon decision of this Court in the case of Kalidas D. Vaghela v/s. State reported in 37(2) 1996 (2) G.L.R. 372, where this Court (Coram : D.G. Karia, J. as he then was) had an occasion to observe that on plain reading of Rule 4 the blood is to be collected in the syringe and to be transferred in the phial containing anticoagulant and preservative and it has to be done by a doctor and that the syringe is required to be made clear and sterilized as contemplated by Rule 4. Observing that the aforesaid requirements of Rule 4 are mandatory and the same are required to be scrupulously followed, the Criminal Revision Application was allowed and the conviction and sentence of the accused there were set aside. In the present case the state of evidence of the medical witness as aforesaid would indicate that the aforesaid parts of the requirements of Rule 4 were not established to have been complied with. In that view of the matter, the acquittal rendered by the learned Addl. Sessions Judge on that basis cannot be faulted. In the result, this

acquittal appeal is hereby dismissed.

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PVR.